


# Montana State Library

This cover sheet created by Internet Archive for formatting.



Digitized by the Internet Archive  
in 2008 with funding from  
Montana State Library

328.05  
L131

A Publication of



Montana Legislative Council

STATE DOCUMENTS COL

DEC 20 1996

MONTANA STATE LIBRARY  
1515 E. SIX AVE.  
HELENA, MONTANA 59620

Montana State Library



3 0864 1004 4139 6

V. 10 No. 18

# THE INTERIM

**NOVEMBER 1996 HELENA, MONTANA VOL. X NO. 18**

PLEASE RETURN

## LEGISLATIVE AUDIT COMMITTEE

Committee Meets in September...The Legislative Audit Committee met September 12 in Room 325 of the State Capitol. The following reports were presented:

### MEDICAID PARTNERSHIP PLAN AUDITS (PERFORMANCE):

#### Drug Delivery System for Montana Medicaid Program, Department of Public Health & Human Services (96P-12)

A limited scope review was performed of Montana's Medicaid delivery system for the pharmacy program. The Medicaid program is administered by the Department of Public Health and Human Services. This review was conducted in cooperation with federal auditors who provided technical support under the Medicaid Partnership Plan. The primary objectives were to identify procedures to achieve cost savings in the acquisition and delivery of drugs and to determine if a mail order delivery system would be more cost effective. The audit concluded that the department has procedures in place to contain costs in the acquisition and delivery of drugs. Based on additional audit testing, the audit also concluded that another type of drug delivery system does not appear to be more cost effective than the current system.

#### Transportation Services for Montana Medicaid Program, Department of Public Health & Human Services (96P-11)

A limited scope review was performed of the controls in place over transportation services provided through the Montana Medicaid

program. The Medicaid program is administered by the Department of Public Health and Human Services. This review was conducted in cooperation with federal auditors who provided technical support under the Medicaid Partnership Plan. This report discusses department procedures for assuring that only reasonable and necessary travel costs are provided. Steps for strengthening this control system are also discussed.

#### ELECTRONIC DATA PROCESSING AUDIT:

##### BBS Compliance Survey (EDP 96SP-49)

This report provides information regarding the state bulletin board system and the responsibilities assigned to state personnel for its maintenance. It identifies areas that, if addressed, could improve the effectiveness of the BBS. The topics discussed include: information upload to the BBS, maintenance standards of BBS information, use of BBS and associated costs, technical support and training, and the impact of the Internet. The Department of Administration has agreed with the suggestions in the report.

#### PERFORMANCE AUDIT FOLLOW-UPS:

##### Enforcement of the Water Quality and the Public Water Supply Acts, Department of Environmental Quality (96SP-68)

A follow-up review was conducted of the performance audit of the enforcement of the Water Quality (WQA) and the Public Water Supply (PWSA) Acts. The original report (94P-36) contained 11 recommendations for improving program enforcement by strengthening management controls, seeking legislative clarification, and developing overall enforcement policy and procedures. Seven recommendations have been implemented; three are partially or are being implemented; and one is not implemented. Based on the overall findings, the audit concludes that the enforcement of the two acts should improve. Although limited activity has taken place since the last review, the foundation has been put in place to strengthen this process in the future.

##### Air Quality Program, Department of Environmental Quality (93P-35)

This memorandum to the Legislative Audit Committee presented a follow-up to the performance audit of the Air Quality Program administered by the former Department of Public Health and Human Services, now the Department of Environmental Quality. Nine of the 19 recommendations are fully implemented and nine are partially implemented. Department officials indicated that the partially implemented recommendations are to be implemented upon completion

of reorganization and the hiring of staff. No further audit work is recommended in this area.

Committee Meets in October...The Legislative Audit Committee met October 23 and 24 in Room 437 of the Capitol Building. The following reports were scheduled to be presented:

October 23, 1996

Performance Audit:

- Food & Consumer Safety, Department of Public Health & Human Services

Financial-Compliance Audits:

- Montana Board of Housing, Department of Commerce
- Commissioner of Political Practices
- Montana School for the Deaf and Blind
- Montana Chiropractic Legal Panel

Financial-Compliance Follow-up:

- Personal Care Attendant Follow-up, Department of Public Health and Human Services

Electronic Data Processing Audit:

- Information Processing Facility and Central Applications

Financial Audit:

- Guaranteed Student Loan Program, Commissioner of Higher Education

Branch Policies

- legislative requests
- Code of Conduct

October 24, 1996

- Overview of Competition proposal (Budget Office)
- Gambling Control follow-up
- Privatization Preliminary Proposal--certain Lottery functions
- NSAA Peer Review Report
- Privatization Preliminary Proposal--MT Mental Health & Nursing Care Center (Center for the Aged)

A full report of the October meeting will be available in the December *INTERIM*.



## ENVIRONMENTAL QUALITY COUNCIL

EQC to Celebrate 25th Anniversary...You are cordially invited to join the Montana Environmental Quality Council in "Celebrating 25 Years of Success". The event will be held November 14, 5:30 to 8:00 p.m. at the Governor's Mansion, 2 Carson, Helena. There will be a 45-minute program with current and former Council members and others reflecting upon the history of the EQC, its successes and failures, and a look to the future. Please plan to unite with other friends of the EQC for an evening of reminiscence and merriment. As food and drinks will be provided, please let either Ellen Engstedt (406)442-6148 or Paul Sihler (406)444-5620 know if you will be attending.

EQC to Meet in Helena...The EQC's next meeting is scheduled for Friday, November 15 in Room 104 of the State Capitol from 8:30 a.m. to 5 p.m. The Council will review the draft Compliance and Enforcement Subcommittee report and formally adopt the findings and recommendations. The MEPA Subcommittee will report to the Council on the MEPA Senate Bill 231 guidelines. The EQC will also review recommendations of the Resource Indemnity Trust Fund Subcommittee. The Council will receive updates on the Forestry BMPs and Senate Bill 382, among other items.

Compliance and Enforcement Subcommittee to Meet...The Compliance and Enforcement Subcommittee's next scheduled meeting is Thursday, November 14 in Room 104 of the State Capitol from 8:30 a.m. to 4:30 p.m. The Subcommittee met on October 3 to refine its study findings and recommendations. Those draft findings have been submitted for a 30-day public comment period. The Subcommittee and the EQC will finalize those findings and recommendations on November 14 and 15. The Subcommittee is also scheduled to review the environmental self-audit working group's progress to date at the November 14 meeting.

Indicators Publication to be Distributed...The Montana Environmental Indicators Subcommittee completed its work on the indicators publication at its October 3 meeting. The publication is scheduled to be distributed November 7.

Resource Indemnity Trust (RIT) Subcommittee to Submit Recommendations...The Legislative Finance Committee (LFC) and the EQC have jointly formed a four-person RIT Subcommittee to provide recommendations on what the state should do about potential imbalances between revenue and expenditures of the various funds that receive RIT interest and tax proceeds. The Subcommittee met on September 18. It developed some preliminary recommendations to be submitted to the LFC and the EQC. Specifically, the Subcommittee will recommend that the scope of RIT fund allocations should be narrowed.

On October 4, the EQC heard the Subcommittee's report and recommendations. The EQC deferred taking action until November 14.

MEPA Subcommittee to Draft Final Recommendations...The MEPA Subcommittee will meet on Thursday, November 14 from 1 to 5 p.m. in Room 108 of the State Capitol. The Subcommittee will review the second round of public comment on the Senate Bill 231 guidelines, which integrate regulatory impact analysis on private property rights into MEPA's environmental review analysis. The Subcommittee will draft its final recommendations to the full EQC. The Subcommittee will also review nominations for the George Darrow MEPA award.

Environmental Self Audit Working Group to Report Findings...As a part of the HJR 10 Compliance and Enforcement study, an EQC working group has been evaluating the merits of providing incentives for individuals and businesses to perform environmental self auditing. This group has met four times and is currently producing a draft working document. The working group will report its findings to the Compliance and Enforcement Subcommittee on November 14.

If you have any questions or wish further information, please contact the EQC staff at (406)444-3742.

## COMMITTEE ON INDIAN AFFAIRS

Committee Holds Final Meeting of Interim...The Committee on Indian Affairs held its final meeting of the interim on Tuesday, October 22. The purpose of the meeting was take comments on five pieces of proposed legislation. The proposed legislation is as follows:

- LCCIA.1      AN ACT CLARIFYING FOR PURPOSES OF THE INDIAN  
HIRING PREFERENCE LAW THAT A STATE AGENCY  
INCLUDES AN ELEMENTARY OR HIGH SCHOOL DISTRICT.
- LCCIA.2      A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
REPRESENTATIVES OF THE STATE OF MONTANA URGING  
THE BOARD OF PUBLIC EDUCATION TO ADOPT RULES  
REQUIRING PUBLIC SCHOOLS TO OFFER COURSES IN INDIAN  
HISTORY AND CULTURE FOR ACCREDITATION PURPOSES  
AND REQUIRING COMPLETION OF AN AMERICAN INDIAN  
STUDIES CLASS BY APPLICANTS FOR A MONTANA  
TEACHING CERTIFICATE OR FOR RENEWAL OF A TEACHING  
CERTIFICATE.

- LCCIA.3 AN ACT ENCOURAGING ALL PUBLIC SCHOOL DISTRICTS IN MONTANA TO REQUIRE THAT ALL OF THEIR PERSONNEL SATISFY THE REQUIREMENTS FOR INSTRUCTION IN AMERICAN INDIAN STUDIES.
- LCCIA.4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE TEACHER TRAINING INSTITUTIONS IN THE STATE TO REQUIRE THAT ALL TEACHER CANDIDATES TAKE AT LEAST ONE COURSE IN AMERICAN INDIAN STUDIES PRIOR TO GRADUATION.
- LCCIA.5 AN ACT DESIGNATING SEPTEMBER 27 OF EVERY YEAR AS "AMERICAN INDIAN HERITAGE DAY" IN THE STATE OF MONTANA.

Committee Hears From a Variety of Witnesses...The Committee took testimony on the proposed legislation from the Office of the Commissioner of Higher Education, the Board of Public Education, the Office of Public Instruction, Fort Peck Community College, Dull Knife Memorial College, Blackfeet Community College, Blackfeet Tribe, Fort Peck Tribes, Little Shell Band of Chippewa, Confederated Salish and Kootenai Tribal Education Department, Fort Peck Tribal Education Department, MT Human Rights Network, and the Montana School Boards Association. In addition, a delegation of students from the four high schools on the Fort Peck Reservation attended the meeting and offered testimony.

The testimony was generally favorable towards the proposed legislation. Some witnesses requested that some changes be made, but no one testified in opposition.

Committee Makes Recommendations...Following the testimony, the Committee adopted LCCIA.3 as is and LCCIA.5 with the change in the date from September 27 to the fourth Friday in September. The Committee asked the staff attorney to work with Rep. Heavy Runner on LCCIA.1 to address some of the concerns expressed in the testimony, including codifying the preference in Title 20 and addressing an Attorney General's opinion regarding the application of the Montana Human Rights Act to school districts on reservations.

The Committee directed staff to make some changes to LCCIA.2 and LCCIA.4 to reflect the concerns expressed in the testimony. Some of these concerns included an implementation date, inclusion of the Little Shell Band, development of model learner goals, and integration of Indian studies into the present curriculum rather than separate courses.

Staff will send the amended legislation to the Committee for approval by mail at a later date.



Committee Considers Legislation from the PEPB Committee...The Committee on Postsecondary Education Policy and Budget (PEPB) is requesting legislation that would require the Board of Regents, upon appropriation of funds, to provide financial assistance to nonbeneficiary students attending tribal colleges in Montana (LC0068). In 1995, the Committee on Indian Affairs sponsored legislation that ultimately passed that provided for a separate appropriation for nonbeneficiary students. LC0068 would make that appropriation a line item appropriation in House Bill No. 2. The Committee on Indian Affairs was asked by the PEPB to sign on LC0068 as a joint requestor. The Committee members wanted some time to consider this request and will decide at the same time that decisions are made on the other pieces of legislation.

## MONTANA SENTENCING COMMISSION

Commission to Meet in Capitol...The Montana Sentencing Commission will meet on Wednesday, November 20 at 8:30 a. m. in Room 325 of the State Capitol. The purpose of the meeting is to determine what the Commission will recommend to the next Legislature. The Commission was asked to look at and recommend what type of sentencing method Montana should use. Currently 27 states including Montana use an indeterminate sentencing structure. Under consideration for Montana is a sentencing guidelines system. Seventeen states use this type of sentencing, with three states currently studying the system. A guideline system requires convicted offenders to serve out their entire sentences.

The Commission is made up of legislative representatives, district judges, county attorneys, law enforcement officers, crime victims, corrections officials, and members of the public. The Commission is completing a series of 15 public meetings throughout Montana soliciting Montanans' feelings on the present indeterminate sentencing structure and on a guidelines sentencing structure.

Members of the public are encouraged to attend this meeting.

## REVENUE OVERSIGHT COMMITTEE

Electric Utility Restructuring and Implications for State Tax Policy...Technological innovations, changes in market structure, and revisions to public policy have led to the potential of increased

competition in the electric utility industry. The industry is undergoing fundamental changes with a complicated web of federal, state, and local regulations. The National Conference of State Legislatures (NCSL) has developed a program to assist states concerning the legislative role in the rapidly changing electric industry, particularly in the areas of restructuring and the implications for state tax policy. At the Revenue Oversight Committee's October 18 meeting, Matthew Brown, Senior Policy Specialist, NCSL; John Goroski, Economist, Department of Environmental Quality; and Bob Uehling, Senior Manager, Deloitte & Touche, presented an overview of changes in the electric utility industry.

Matthew Brown discussed national trends in electric utility restructuring. Brown noted that there is excess capacity in electric generation. As a result, electric utilities are selling power, in some cases, for less than 1¢ per kilowatt hour in spot markets. An important issue related to excess capacity is whether utilities will be able to recover their "stranded costs" associated with generation facilities. He also pointed out that federal legislation as well as Federal Energy Regulatory Commission (FERC) rules are being developed to encourage competition in wholesale markets. Eventually competition will be a part of the retail market. That is, consumers will be able to choose their electric provider.

John Goroski described electric utility restructuring in Montana. He said that the Colstrip power generating units supplanted hydro-based generation as the major source of electric power in the state. Energy consumption has increased over time, particularly in the industrial sector. Industrial customers account for less than 1% of the customers but use about 45% of the electricity produced. Goroski pointed out that the FERC will continue to regulate transmission and that the Public Service Commission will continue to regulate distribution, but that power generation will become competitive.

Bob Uehling discussed the major tax issues related to restructuring. Competition will increase the incentive to reduce all costs, including taxes. Electric utilities are subject, to varying degrees, to a wide range of state and local taxes, including property taxes, gross receipts taxes, sales and use taxes, income and franchise taxes, utility user fees, and regulatory fees. Nationwide, property taxes account for 41% of the total state and local taxes paid by investor-owned utilities. Because Montana utilities are not subject to all the taxes listed above, the proportion of property taxes would be higher in Montana. Uehling said that the advantages of competition will not be maximized if competing providers face different tax structures. He also discussed the constitutional tax issues related to interstate competition.

The complex issues of electric utility restructuring and tax policy considerations are likely to engage the attention of state legislatures for the next several years. Forums like the one presented by NCSL will assist state legislatures as they struggle with the a wide variety of policy options.

Committee Adopts Bill Drafts to Revise the Taxation of Motor Vehicles...Following the presentation on electric utility restructuring and tax policy, the Committee met to conduct further business. The Committee completed its study of motor vehicle taxation by voting to introduce legislation during the 1997 Session that would revise the taxation of passenger vehicles, heavy trucks, and trailers having a declared weight of less than 26,000 pounds. Passenger vehicles and heavy trucks are in one bill and trailers in a separate bill. Under the motor vehicle proposal, passenger vehicles would be taxed at 2% of the depreciated value of the manufacturer's suggested retail price. Passenger vehicles would be subject to one of four statutorily determined depreciation schedules depending on whether the vehicle is a passenger car, light pickup, van, or "sport utility" vehicle. All heavy trucks (local and interstate vehicles) would be taxed on a flat fee schedule, based on the manufacturer's rated capacity and on the age of the vehicle. The fee schedule would correspond to the reduction in class eight personal property tax rates from 9% to 6%. In addition, personal property attached to the vehicle would be exempt from property taxation. The flat fee incorporates the value of personal property. (See the October *INTERIM* for prior coverage.)

A separate proposal would exempt trailers having a declared weight of less than 26,000 pounds from property taxation (trailers in excess of 26,000 pounds are already exempt from taxation) and would impose a flat fee based on age and weight. The proposals, if adopted by the Legislature, would be effective January 1, 1998.

Department of Revenue Reports...Mick Robinson, Director, Department of Revenue, informed the Committee that the Department has signed a negotiated tax agreement with several railroad car companies operating in the state. The Department had previously backed out of the settlement following a U.S. Supreme Court decision in *Seminole Tribe of Florida v. Florida*. The decision addressed the issue of whether an Indian tribe may sue a state in federal court to enforce certain provisions of the Indian Gaming Regulatory Act. The Court held that the 11th amendment to the U.S. Constitution bars Indian tribes from suing states in federal court. The decision, however, went beyond the narrow issue of Indian gaming by barring suits against states on other federal laws. The railroad car companies had filed suit against the Department challenging the state's method of taxing rail cars operating in the state. Federal district court Judge Shanstrom denied a Department motion to dismiss the rail car suit on the grounds that the state had implicitly waived its 11th amendment immunity by agreeing to the settlement. The Department decided not to appeal and signed the agreement.

Robinson also presented the essential features of the Department's proposal to eliminate the incentive for married taxpayers to file separate income tax returns. The purpose of the proposal is to eliminate the horizontal tax inequity that exists between married taxpayers who file jointly and those who file separately. Robinson noted that 2-earner

households pay about 30% less in taxes than 1-earner households on the same level of income. Specific details of the proposal will be revealed after an analysis of tax year 1995 income tax returns.

Committee to Meet in November...The Committee will meet Monday, November 25 in Room 104 of the State Capitol. The purpose of the meeting is to adopt revenue estimates for the 1999 biennium.

## CAPITOL RESTORATION

Window Repairs Continue...All of the lead based paint on the old windows has been removed and a prototype of a repaired window has been approved. Beginning the week of October 28, the contractor will begin removing 5-10 windows a week to be repaired, routed for the installation of insulated glass, painted, and reinstalled in the building. The new windows submittals were not approved in time to purchase the windows before the onset of extremely cold weather, so the purchase and installation of these windows has been delayed until spring.

Roof Repairs Nearing Completion...The roof repair and replacement project is nearing completion. The contractor should be off the premises well before the November 22 project completion deadline.

Space Planning Still Under Discussion...The Department of Administration met again this month with the Legislative Council to review the space utilization of the legislative branch in the Capitol. The Council agreed to co-sponsor a bill allowing the Legislature to have more flexibility in the space they occupy, and which will also allow the Legislature and the Department to go forward with plans for improved hearing rooms and public access to the legislative process. This work product is intended as a recommendation to the new House and Senate leadership elected in November.

## LEGISLATIVE FINANCE COMMITTEE

Committee to Meet on November 22...The Legislative Finance Committee (LFC) will meet on November 22 in Room 104 of the State Capitol. Tentative agenda items include:



1. draft Committee bills on:
  - budget comparisons;
  - interim study of RIT fund;
  - legislative appropriation issues; and
  - pilot project for prioritization of base budget services; and
2. recommendations to Appropriations leadership on budget global issues;
3. status of budget development system;
4. joint Budget Book development;
5. status of the Mental Health Managed Care contract; and
6. budget amendments summary report.

## POSTSECONDARY EDUCATION POLICY AND BUDGET COMMITTEE

PEPB Committee Meets...At its October 7 meeting, the Postsecondary Education Policy and Budget Committee (PEPB) completed action on the last unresolved Committee issues developed during the 1996-1997 interim. Additional policy recommendations to be included in the proposed House/Senate joint resolution are recommendations that:

1. the Montana University System (MUS) operating plans and reversions be based on the same enrollment estimate agreed on by the Legislature;
2. the Board of Regents (BOR) implement a combination of policies governing the distribution of non-resident tuition generated by student FTE in excess of those estimated, depending on the circumstances;
3. the MUS be allowed to re-allocate resident and non-resident student FTE within the system to offset errors in enrollment estimates at each unit before calculating reversions to the general fund and tuition reversions to the BOR;
4. the fiscal 1999 interim PEPB monitor the trends in high school graduation, college enrollment, and tuition; and



consider the implications that they may have for policy decisions concerning system access and tuition rates;

5. the MUS pursue public/private partnerships such as:
  - private funding for research, public service, or information technology;
  - university leaders serving on private company boards, subject to BOR policy; and
  - private company leaders serving on university boards and task forces;
6. the MUS and the Legislature continue improving communications among the Board of Regents, university system administrators and educators, students, K-12 educators, legislators, the Executive Branch and the public in general, using efforts such as:
  - a state of education address to the Legislature;
  - an information fair;
  - discussions such as those held at Yellow Bay;
  - orientation for legislators; and
  - assigning duties to the House and Senate Education committees and the Joint Appropriations subcommittee on Education that include joint meetings to discuss education policy;
7. the MUS becomes competitive and efficient through the use of information technology in administration and education;
8. the MUS continue to participate in the development of a Long Range Building program in which submittals reflect a coordinated approach for major maintenance needs, including a standardized evaluation of needs, as well as a prioritization and cost estimate for each project;
9. the MUS classroom and program review policy be aggressively implemented;
10. the BOR establish a widely publicized, formal appeals process for dealing with complaints concerning credit transfer; and
11. the BOR improve the focus of the MUS on service to and satisfaction of students.

## LEGISLATIVE COUNCIL

Council to Meet in November...The Legislative Council will meet November 14 at 9 a.m. in Room 437 of the Capitol. Included on the agenda will be at least the following:

- Legislative Council assignment of interns;
- review of Council legislation and assignment of sponsors;
- a presentation on telecommunications reform as requested by the Council;
- consideration of pursuing a contract to classify session employee positions in the same manner as the rest of the staff has been classified; and
- Legislative Council concurrence in the EQC selection of Todd Everts as the Legislative Environmental Analyst.

## THE BACK PAGE

While retirement is something that state employees look forward to, many employees do not pay much attention to how their retirement system works. They only know that when they retire, there will be a pension there for them to use.

This month's "The Back Page" provides a look at the public employee retirement system in Montana with an eye to helping employees make good decisions about their retirement.

### WHAT YOU MAY NOT KNOW ABOUT MONTANA'S PUBLIC EMPLOYEE RETIREMENT SYSTEM

by Sheri Heffelfinger, Research Analyst  
Legislative Services Division

#### INTRODUCTION

Recently, about 400 classified public employees of the University System signed a petition requesting that they be given the option of belonging to the University System's Optional Retirement Program (ORP) instead of being forced into the Public Employee's Retirement System (PERS). In response, the Board of Regents agreed to recommend that the ORP be expanded from covering only teaching faculty members, to covering all University System employees.

#### DEFINED CONTRIBUTION VS. DEFINED BENEFIT

The ORP is a defined contribution retirement plan where members can, within certain limitations, select from a variety of investment options. Furthermore, employer contributions are made to the members' individual accounts. In effect, employer contributions belong to the individual members. Also, as a defined contribution plan, there is no system unfunded liability (debt). Benefits paid to members depend entirely on total contributions and investment earnings. There is no guaranteed benefit level.

The PERS, on the other hand, is viewed as a defined benefit plan; members do not have investment choices, but are promised a certain

defined benefit upon retirement. Also, employer contributions are pooled and, if a member chooses to withdraw from PERS, the member is entitled to a refund of only the member's contributions plus interest.

Among the arguments raised in support of allowing classified university employees to be covered by the ORP instead of the PERS is that individuals should have a right to make choices about their retirement investments and that, under the ORP, employer contributions are portable and that when an ORP member terminates public service, the member does not have to leave his or her contributions in the system in order to benefit from the employer contributions.

The Committee on Public Employee Retirement Systems is studying the University System's proposal and will be making a report and recommendation to the full Legislature.

### **MONEY PURCHASE OPTION**

As a result of the Committee's deliberations, the spot light has been turned to a little known feature of PERS. This feature makes PERS different from pure defined benefit plans and significantly affects the argument that PERS members lose retirement benefits because they may not take the employer contribution with them if they withdraw from PERS.

This little known, yet very valuable feature, is called the "money purchase option"; and, for state employees who fear they will lose their retirement benefits if they leave public service or fall victim to privatization or government downsizing initiatives, this money purchase option can make a significant difference in the amount of their retirement benefits should they choose to leave their contributions in the plan.

The defined benefit feature of PERS promises a certain monthly retirement payment that is based on a retiree's age and years of covered public service. The PERS defined benefit formula is:

$$\text{years of service} \times 1/56 \times \text{final average salary} = \text{monthly benefit}$$

To be eligible for a retirement benefit under PERS, a member must be vested (been a member for at least 5 years) and must decide to leave their contributions in the system. The member will not be eligible for an early retirement benefit until attaining 25 years of service or reaching 50 years old. The member will not be eligible for full retirement until reaching 60 years old or working a total of 30 years.

But, most public employees leave public service after 7 or 8 years. Are these employees being penalized by PERS for not being career employees? If PERS were a pure defined benefit plan, one could argue that these employees are being penalized. But, PERS is not a pure defined benefit plan; it has a money purchase feature that calculates benefits, not based on years of service, but based on total employee contributions, plus 5% annual interest on those contributions, matched 100% by the employer, and with a guaranteed 8% interest annuity table.

While the defined benefit formula favors the longer-term, older state employees, the money purchase formula favors the younger employees with fewer years of service.

In the following example, the PERS defined benefit feature is compared with the money purchase feature as it affects the benefits of a public employee who terminates public service after only 6 years.

If a 43-year-old PERS member leaves public service with 6.1667 years of service, had a final average salary (FAS) of \$2,180 per month, and decides to withdraw his or her total contributions plus interest from PERS, the member's lump sum refund amount will be \$10,213. The member could then take this amount and either spend it or reinvest it for retirement. The member is not entitled to a refund of employer contributions.

However, if the member leaves his or her contributions in the system decides to wait until age 60 to draw the full retirement benefit, the member's defined benefit will be as follows:

$$6.1667 / 56 \times \$2,180 = \$240 \text{ per month pension}$$

The years of service part of the benefit formula is what is often of concern to employees who do not wish to or are not allowed to make a career of public service. In this example, the 43-year-old member must wait 17 years to draw a normal retirement benefit. Consequently, the relative worth of the member's final average salary will have been eroded by 17 years of inflation and increases in the cost of living.

But, this is where the hybrid nature of the PERS retirement plan comes in. What may be little known to most state employees and policy makers, is that under PERS, benefits are not only calculated using the defined benefit formula shown above, but their benefit is also automatically calculated using the money purchase option formula. (Although "option" implies employee choice is involved, this money purchase formula is automatically applied to all calculations of retirement benefits.) The money purchase formula is:



$$[(\text{employee contributions} + 5\% \text{ annual interest}) \times 2] / 1000 \times 8.547 (\text{an } 8\% \text{ annuity table}) \times \text{early retirement factor, if any} = \text{monthly benefit amount}$$

Using the same example as used above, for the 43-year-old PERS member who leaves active employment after 6.1667 years of service and chooses to leave his or her contributions in the system and does not draw a retirement benefit until age 60, that member's benefit under the money purchase calculation will be as follows:

$$(\$22,957 \times 2) / 1,000 \times 8.547 \times 100\% = \$392 \text{ per month}$$

The noteworthy feature here is that the value of the employee contributions plus interest is doubled by an employer match at the time of retirement. The product of the employee contributions (assuming 5% interest annually) multiplied by 2 is then divided by 1,000 because the annuity factor, which is 8.547, is the cost to the retirement system of providing a \$1,000 per month annuity for life to a person who has reached age 60. This annuity factor is a guaranteed 8% return on investments and assumes that the employee will live to be 85 years old. Finally, the result is multiplied by 100% because the member in this example is choosing not to draw a retirement benefit until age 60. Age 60 is 100% of the normal retirement age.

After both the defined benefit calculation and the money purchase calculation are made, the monthly retirement benefits are compared. The member's retirement benefit will be the higher of the two benefit amounts. For a 43-year-old member who terminates public service after little more than 6 years of service and who waits until age 60 to draw a retirement benefit, the money purchase retirement benefit is \$152 per month higher than the defined benefit. Thus, that member will receive the money purchase benefit, \$392 per month.

In a pure defined benefit plan, the member would not be entitled to the money purchase option, but would have to receive the benefit as determined under the defined benefit formula  $(1/56 \times \text{years of service} \times \text{FAS})$ , which would be the \$240 a month.

The money purchase option seems to be a relatively unknown feature of PERS, but it significantly affects debates regarding the portability of benefits and how PERS benefits compare to commercial annuities that could be purchased with a lump sum refund of an employee's contributions.

**CONCLUSION**

In planning for retirement and in debates about whether classified public employees in the University System should be covered under the ORP instead of the PERS, it will be well to keep in mind that PERS is a "two-in-one" plan. The PERS is a defined benefit plan for some and a money purchase plan (similar to a defined contribution plan) for others.



## INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,  
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

### NOVEMBER

November 5, Election Day, holiday

November 7, Committee on Public Employee Retirement Systems,  
Room 104, 8 a.m.

November 11, Veterans' Day, holiday

November 14, Legislative Council, Room 437, 9 a.m.

November 14, Gaming Advisory Council, Room 325, 9 a.m.

November 14, EQC Compliance and Enforcement Subcommittee, Room  
104, 8:30 a.m.

November 14, EQC MEPA Subcommittee, Room 108, 1 p.m.

November 14, EQC 25th Anniversary Celebration, Governor's Mansion,  
5:30 p.m.

November 15, EQC, Room 104, 8:30 a.m.

November 20, Montana Sentencing Commission, Room 325, 8:30 a.m.

November 22, Legislative Finance Committee, Room 104

November 22, Presession Orientation, House Chamber, 3 p.m.

November 23, Presession Caucuses, 8 a.m.

November 25, Revenue Oversight Committee, Room 104

November 28, Thanksgiving, holiday

Legislative Services Division  
Room 138, State Capitol  
P.O. Box 201706  
Helena MT 59620-1706

360 copies of this public document were published at an estimated cost of 50¢ per copy, for a total cost of \$180.00, which includes \$124.00 for printing and \$56.00 for distribution.





